

## APPEAL NO. 010341

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 29, 2001. In regard to the issues before her the hearing officer decided that the respondent (claimant herein) sustained a compensable injury on \_\_\_\_\_, and that the claimant had disability from February 23, 1999, through the date of the CCH. The appellant (carrier herein) files a request for review arguing that the hearing officer erred by finding that the claimant suffered a compensable mental trauma injury. The carrier argues that absent a compensable injury the claimant could not have disability. The claimant responds that the hearing officer's finding of a compensable mental trauma injury was sufficiently supported by the evidence.

### DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Many of the essential facts of the case were not in dispute and the hearing officer sets out the relevant facts in her decision. We adopt the hearing officer's rendition of the facts and will only summarize those germane to the appeal. These include the fact that on \_\_\_\_\_, the claimant was employed as the manager of a family planning clinic. The employer had concerns about security and on \_\_\_\_\_, conducted a drill by mailing to a number of its clinics packages which fit the profile for containing a bomb. One of these packages was sent by UPS to the clinic the claimant managed. Another employee signed for the package. The claimant became aware that the package had been delivered and believed that it contained a bomb. The claimant ordered all the employees and clients into a "safe" room and had another employee call 911. The police came to the clinic and ascertained that the package was part of a bomb drill.

The claimant testified that after this incident she put on weight, lost interest in her normal daily activities, and her ability to perform her job deteriorated. The claimant's husband testified that after the incident the claimant was depressed, easily startled, unable to cope, and easily tired. The claimant testified that she sought medical attention for these problems on February 23, 1999, when she read an office email stating that a package containing anthrax had been delivered to another one of the employer's clinics. The claimant testified that at this point she had a panic attack, began to cry uncontrollably, and that her blood pressure shot up.

The claimant sought medical treatment and has been diagnosed with major depression, single episode panic disorder, and post-traumatic stress disorder. Dr. R, the claimant's treating doctor, related the claimant's problems to the \_\_\_\_\_, incident. The claimant was sent by the Texas Workers' Compensation Commission for an examination by Dr. C, a board certified psychiatrist and neurologist, who stated, in a report dated January 31, 2000, as follows:

Based on reasonable medical probability the sole cause of [claimant's] psychiatric condition is the incidence [sic] that occurred during her employment with [employer] as a clinical manager when a fake bomb was sent to the employees in order to simulate a bomb threat.

Dr. P, a psychologist, wrote a report and testified for the carrier at the CCH based upon his review of the medical records. Dr. P stated that in his opinion the claimant was suffering from an adjustment disorder with mixed anxiety and a depressed mood and that this was not caused by a specific incident at her employment.

The hearing officer's decision includes the following findings of fact and conclusions of law:

### **FINDINGS OF FACT**

2. On \_\_\_\_\_, while at work as a clinic manager, Claimant was involved in a bomb threat, which she later learned was a hoax, and such incident resulted in her developing post traumatic stress disorder, and major depressive disorder.
3. Pursuant to Sec. 408.006 of the [1989] Act, Claimant sustained a mental trauma injury on \_\_\_\_\_, while in the course and scope of her employment.
4. From February 23, 1999, through the date of this [CCH], Claimant has been unable to obtain and retain employment at her preinjury wages because of her \_\_\_\_\_ work-related injury.

### **CONCLUSIONS OF LAW**

3. On \_\_\_\_\_, Claimant sustained a compensable mental trauma injury.
4. From February 23, 1999, through the date of this [CCH], Claimant has had disability.

Section 408.006 provides as follows:

- (a) It is the express intent of the legislature that nothing in this subtitle shall be construed to limit or expand recovery in cases of mental trauma injuries.
- (b) A mental or emotional injury that arises principally from a legitimate personnel action, including a transfer,

promotion, demotion, or termination, is not a compensable injury under this subtitle.

The carrier makes a variety of arguments as to why the claimant's injury should not be considered a compensable mental trauma injury. These arguments include that the claimant's injury was due to cumulative mental trauma rather than a specific incident; that the claimant continued to work for a period of time after the \_\_\_\_\_, incident; that the claimant did not touch or open the package; that other individuals working for the employer who were exposed to similar packages did not develop the problems the claimant developed; that there was evidence that the claimant was forewarned of the bomb drill; that the claimant's testimony was not credible; that there was evidence that the claimant had preexisting depression; and that there was medical evidence that the claimant's condition was not related to the incident of \_\_\_\_\_.

Most of these arguments are essentially attempts to reargue the evidence. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find sufficient evidence to support the factual findings of the hearing officer.

The injury was traceable to a single event. While there was evidence that the claimant suffered from other stressors as well, there was medical evidence relating the claimant's condition to the compensable injury. An employer takes an employee as it finds the employee and a preexisting condition is only a defense to compensability if it is provable that the preexisting condition is the sole cause of the condition. We agree with the claimant that the present case is analogous in many respects to Texas Workers' Compensation Commission Appeal No. 950788, decided June 29, 1995, wherein we affirmed a finding of a compensable mental trauma injury by the hearing officer.

The decision and order of the hearing officer are affirmed.

---

Gary L. Kilgore  
Appeals Judge

CONCUR:

---

Judy L. S. Barnes  
Appeals Judge

---

Elaine M. Chaney  
Appeals Judge